

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

11 MILAGROS R. SURATOS,)
12 Petitioner,) 2:10-cv-01010-PMP-NJK
13 vs.) **ORDER**
14 SHERYL FOSTER, *et al.*,)
15 Respondents.) /

17 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254,
18 by a Nevada state prisoner. This matter comes before the Court on the merits of the petition.

19 || I. Procedural History

20 On April 18, 2007, the State charged petitioner with exploitation of an older person and
21 neglect of an older person causing substantial bodily harm. (Exhibit 2).¹ The case proceeded to a
22 jury trial, and petitioner was convicted of both charges on November 20, 2008. (Exhibit 69). The
23 judgment of conviction was filed on January 21, 2009. (Exhibit 74). Petitioner was sentenced to a

¹ The exhibits referenced in this order are found in the Court's record at ECF Nos. 10-13.

1 term of 24 to 96 months imprisonment on Count I, and 24 to 60 months imprisonment on Count II,
 2 with the terms running concurrently. (*Id.*). Petitioner was further ordered to pay restitution in the
 3 amount of \$22,000.00. (*Id.*).

4 Petitioner appealed her conviction to the Nevada Supreme Court. (Exhibit 80). On May 7,
 5 2010, the Nevada Supreme Court affirmed the conviction and denied petitioner's direct appeal on the
 6 merits. (Exhibit 109). Petitioner did not file a state habeas petition. On June 24, 2010, this Court
 7 received petitioner's federal habeas petition. (ECF No. 1). Respondents filed an answer. (ECF No.
 8 9). Although petitioner was granted the opportunity to do so, petitioner did not file a reply to the
 9 answer. (*See* ECF No. 4, at p. 2).

10 **II. Federal Habeas Corpus Standards**

11 The Antiterrorism and Effective Death Penalty Act ("AEDPA"), at 28 U.S.C. § 2254(d),
 12 provides the legal standard for the Court's consideration of this habeas petition:

13 An application for a writ of habeas corpus on behalf of a person in
 14 custody pursuant to the judgment of a State court shall not be granted
 15 with respect to any claim that was adjudicated on the merits in State
 16 court proceedings unless the adjudication of the claim –

17 (1) resulted in a decision that was contrary to, or involved an
 18 unreasonable application of, clearly established Federal law, as
 19 determined by the Supreme Court of the United States; or

20 (2) resulted in a decision that was based on an unreasonable
 21 determination of the facts in light of the evidence presented in the State
 22 court proceeding.

23 The AEDPA "modified a federal habeas court's role in reviewing state prisoner applications
 24 in order to prevent federal habeas 'retrials' and to ensure that state-court convictions are given effect
 25 to the extent possible under law." *Bell v. Cone*, 535 U.S. 685, 693-694 (2002). A state court
 26 decision is contrary to clearly established Supreme Court precedent, within the meaning of 28 U.S.C.
 27 § 2254, "if the state court applies a rule that contradicts the governing law set forth in [the Supreme
 28 Court's] cases" or "if the state court confronts a set of facts that are materially indistinguishable from

1 a decision of [the Supreme Court] and nevertheless arrives at a result different from [the Supreme
 2 Court's] precedent.” *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003) (quoting *Williams v. Taylor*, 529
 3 U.S. 362, 405-406 (2000) and citing *Bell v. Cone*, 535 U.S. 685, 694 (2002)). The formidable
 4 standard set forth in section 2254(d) reflects the view that habeas corpus is ““a guard against extreme
 5 malfunctions in the state criminal justice systems,’ not a substitute for ordinary error correction
 6 through appeal.” *Harrington v. Richter*, 562 U.S. ___, ___, 131 S.Ct. 770, 786 (2011) (quoting
 7 *Jackson v. Virginia*, 443 U.S. 307, 332 n.5 (1979)).

8 A state court decision is an unreasonable application of clearly established Supreme Court
 9 precedent, within the meaning of 28 U.S.C. § 2254(d), “if the state court identifies the correct
 10 governing legal principle from [the Supreme Court's] decisions but unreasonably applies that
 11 principle to the facts of the prisoner's case.” *Lockyer v. Andrade*, 538 U.S. at 75 (quoting *Williams*,
 12 529 U.S. at 413). The “unreasonable application” clause requires the state court decision to be more
 13 than merely incorrect or erroneous; the state court's application of clearly established federal law
 14 must be objectively unreasonable. *Id.* (quoting *Williams*, 529 U.S. at 409). In determining whether a
 15 state court decision is contrary to, or an unreasonable application of federal law, this Court looks to
 16 the state courts' last reasoned decision. *See Ylst v. Nunnemaker*, 501 U.S. 797, 803-04 (1991);
 17 *Shackelford v. Hubbard*, 234 F.3d 1072, 1079 n.2 (9th Cir. 2000), cert. denied, 534 U.S. 944 (2001).

18 In a federal habeas proceeding, “a determination of a factual issue made by a State court shall
 19 be presumed to be correct,” and the petitioner “shall have the burden of rebutting the presumption of
 20 correctness by clear and convincing evidence.” 28 U.S.C. § 2254(e)(1). If a claim has been
 21 adjudicated on the merits by a state court, a federal habeas petitioner must overcome the burden set
 22 in § 2254(d) and (e) on the record that was before the state court. *Cullen v. Pinholster*, 131 S.Ct.
 23 1388, 1400 (2011).

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1 **III. Discussion**2 **A. Ground One**

3 Petitioner asserts that the state district court erred in failing to dismiss potential juror #12 for
 4 cause, thus violating her due process rights. Petitioner's contention lacks merit because she has
 5 failed to rebut the state court's presumptively correct finding that the challenged juror could serve
 6 fairly and impartially. *See* 28 U.S.C. 2254(e)(1); *Greene v. Georgia*, 519 U.S. 145, 146 (per curium)
 7 ("federal courts must accord a presumption of correctness to state courts' finding of juror bias."). In
 8 addressing this claim, the Nevada Supreme Court ruled as follows:

9 Appellant Milagros R. Suratos claims that the district court erred in
 10 denying her challenge to a member of the venire for cause. The
 11 decision whether to remove a prospective juror for cause lies within
 12 the broad discretion of the district court. *Weber v. State*, 121 Nev.
 13 554, 580, 119 P.3d 107, 125 (2005). We conclude that the district
 14 court did not err because the prospective juror did not express an
 15 opinion regarding the merits of the case and was able to confidently
 16 state that, despite her sympathy for vulnerable seniors, she could be a
 17 fair and impartial juror and her sympathy would not influence her
 18 verdict. *See id.* at 581, 119 P.3d at 125 (discussing that it would not
 19 be error to deny challenge when prospective juror relinquishes
 20 previous statement at odds with duty as impartial juror).

21 (Exhibit 109, at p. 1). The factual findings of the state court are presumed correct. 28 U.S.C.
 22 § 2254(e)(1). Petitioner has failed to meet the burden of proving that the Nevada Supreme Court's
 23 ruling was contrary to, or involved an unreasonable application of, clearly established federal law, as
 24 determined by the United States Supreme Court, or that the ruling was based on an unreasonable
 25 determination of the facts in light of the evidence presented in the state court proceeding. Habeas
 26 relief on Ground One of the federal petition is denied.

27 **B. Ground Two**

28 Petitioner asserts that the State was estopped from charging her with exploitation in light of
 29 the findings of the probate court, in violation of her due process rights. Petitioner does not identify
 30 which findings of the probate court she believes were binding on the State and she fails to provide
 31 any documentation of the probate proceedings. The record reveals that the probate court did not

1 make any factual findings regarding the victim's competency, the validity of the victim's will, or any
 2 other matter related to petitioner's criminal case. (Exhibit 61, at p. 69 (no factual findings made at
 3 competency hearing); Exhibit 63, at pp. 129, 134 (no factual findings made regarding the validity of
 4 the victim's will in the probate settlement)).

5 Even if the probate court had made factual findings, the doctrine of collateral estoppel is not
 6 applicable where, as here, one of the parties in the present litigation was not a party in the former
 7 litigation. *Wilson v. Belleque*, 554 F.3d 816, 830 (9th Cir. 2009) ("Collateral estoppel, or issue
 8 preclusion, 'means simply that when an issue of ultimate fact has once been determined by a valid
 9 and final judgment that issue cannot be litigated *between the same parties* in any future lawsuit.'")
 10 (citation omitted) (emphasis added). Respondents were not parties to the matter litigated in the
 11 probate court, thus the doctrine of collateral estoppel is not applicable in this case. The Nevada
 12 Supreme Court rejected petitioner's claim as follows:

13 Suratos claims that the doctrine of collateral estoppel precluded the
 14 State from pursing the exploitation charge. This claim lacks merit
 15 because no issues of fact or law were litigated and determined by the
 16 probate court that approved the settlement of the will contest brought
 17 by the victim's heirs. See Yates v. United States, 354 U.S. 298, 335
 18 (1957) (confirming that doctrine, if applicable, may bar subsequent
 criminal case even when prior proceedings were civil), overruled on
 other grounds by Burks v. Unite States, 437 U.S. 1, 18 (1978); see also
Five Star Capital Corp. v. Ruby, 124 Nev. ___, ___, 194 P.3d 709, 713
 (2008) (explaining the four factors necessary for issue preclusion to
 apply).

19 (Exhibit 109, at p. 2). The factual findings of the state court are presumed correct. 28 U.S.C.
 20 § 2254(e)(1). Petitioner has failed to meet the burden of proving that the Nevada Supreme Court's
 21 ruling was contrary to, or involved an unreasonable application of, clearly established federal law, as
 22 determined by the United States Supreme Court, or that the ruling was based on an unreasonable
 23 determination of the facts in light of the evidence presented in the state court proceeding. Habeas
 24 relief is denied on Ground Two of the federal petition.

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1 **C. Grounds Three and Four**

2 In Grounds Three and Four, petitioner asserts that there was insufficient evidence presented
 3 at trial to support the convictions of neglect causing substantial bodily harm of an older person and
 4 exploitation of an older person.

5 When a habeas petitioner challenges the sufficiency of evidence to support his conviction, the
 6 court reviews the record to determine “whether, after viewing the evidence in the light most
 7 favorable to the prosecution, any rational trier of fact could have found the essential elements of the
 8 crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Jones v. Wood*,
 9 207 F.3d 557, 563 (9th Cir. 2000). The *Jackson* standard does not focus on whether a correct guilt or
 10 innocence determination was made, but whether the jury made a rational decision to convict or
 11 acquit. *Herrera v. Collins*, 506 U.S. 390, 402 (1993). Under the *Jackson* standard, the prosecution
 12 has no obligation to rule out every hypothesis except guilt. *Wright v. West*, 505 U.S. 277, 296 (1992)
 13 (plurality opinion); *Jackson*, 443 U.S. at 326; *Schell*, 218 F.3d at 1023. *Jackson* presents “a high
 14 standard” to habeas petitioners claiming insufficiency of the evidence. *Jones v. Wood*, 207 F.3d 557,
 15 563 (9th Cir. 2000).

16 Sufficiency claims are limited to a review of the record evidence submitted at trial. *Herrera*,
 17 506 U.S. at 402. Such claims are judged by the elements defined by state law. *Jackson*, 443 U.S. at
 18 324, n.16). The reviewing court must respect the exclusive province of the fact-finder to determine
 19 the credibility of witnesses, to resolve evidentiary conflicts, and to draw reasonable inferences from
 20 proven facts. *United States v. Hubbard*, 96 F.3d 1223, 1226 (9th Cir. 1996). The district court must
 21 assume the trier of fact resolved any evidentiary conflicts in favor of the prosecution, even if the
 22 determination does not appear on the record, and must defer to that resolution. *Jackson*, 443, U.S. at
 23 326. The United States Supreme Court has recently held that “the only question under *Jackson* is
 24 whether [the jury’s] finding was so insupportable as to fall below the threshold of bare rationality.”
 25 *Coleman v. Johnson*, 132 S.Ct. 2060, 2065, ____U.S. ____ (per curium) (2012).

1 Regarding the crime of neglect of an older person causing substantial bodily harm, the
2 elements of the crime are: (1) the failure to provide services necessary to maintain the physical or
3 mental health, (2) of an older person 60 years of age or older, (3) by a person who has assumed a
4 legal or contractual obligation to care for the older person, (4) resulting in substantial bodily harm to
5 the older person. *See* NRS 200.5092(4); NRS 200.5099(2). The evidence presented at trial included
6 testimony establishing the following: Petitioner's and the victim's longtime friend Jerry Bruan
7 signed a contract to care for the victim. (Exhibit 63, at pp. 166, 168). The victim was over 80 years
8 old during the relevant time period. (Exhibit 64, at p. 80). Petitioner administered excessive doses
9 of an unprescribed blood thinner to the victim. (Exhibit 54, at pp. 149, 157-58). Petitioner gave the
10 victim 8 ounces of vodka a day, despite the victim's history of alcohol abstention. (Exhibit 54, at p.
11 153; Exhibit 61, at pp. 149-50). The victim was found with a marijuana derivative in his system
12 while under petitioner's care. (Exhibit 54, at p. 212). Petitioner was informed that the victim was a
13 suicide risk. (Exhibit 61, at pp. 185-86). Petitioner failed to secure the victim's sleeping medication,
14 permitting him to attempt suicide. (Exhibit 64, at p. 42). Petitioner's neglectful actions resulted in
15 substantial bodily harm to the victim. (Exhibit 54, at p. 158) (victim had risk of spontaneous
16 bleeding and heart attack due to blood thinner); Exhibit 54, at p. 168 (victim's bruising following a
17 fall was accelerated by blood thinner); Exhibit 55, at p. 100 (victim in "critical and unstable"
18 condition when admitted to the hospital after his fall); Exhibit 54, at p. 207 (victim faced risk of
19 death due to sleeping pill overdose); Exhibit 64, at pp. 42-44 (explaining that petitioner's neglect
20 resulted in substantial bodily harm to the victim). The record shows that sufficient evidence was
21 presented at trial for a rational trier of fact to find petitioner guilty beyond a reasonable doubt of the
22 crime of neglect of an older person causing substantial bodily harm.

23 The elements of a category B felony crime of exploitation of an older person are: (1)
24 converting or obtaining control through deception, intimidation, or undue influence, (2) money,
25 assets, or property, (3) with a value of \$5,000.00 or more, (4) of an older person 60 years of age or
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1 older, (5) with the intent to permanently deprive the older person of ownership, use, benefit, or
 2 possession of the property, (6) by a person who has the trust and confidence of the older person.
 3 NRS 200.5092(2); NRS 200.5099(3)(c). The evidence presented at trial included testimony
 4 establishing the following: The victim was over 80 years old during the relevant period (Exhibit 64,
 5 at p. 80). Petitioner gained the trust and confidence of the victim. (Exhibit 61, at pp. 226-27).
 6 Petitioner told the victim that mutual acquaintance Jerry Braun was trying to take the victim's money
 7 and send him to a nursing home. (Exhibit 61, at p. 239). Petitioner threatened to send the victim
 8 back to a nursing home. (Exhibit 58, at p. 16; Exhibit 63, at p. 169). The victim was dependent on
 9 petitioner and petitioner manipulated the victim to her advantage. (Exhibit 61, at p. 226). Petitioner
 10 opened a joint bank account with the victim. (Exhibit 55, at p. 202). Petitioner withdrew over
 11 \$6,200.00 of the victim's money from the joint account. (Exhibit 55, at p. 211). Petitioner removed
 12 gold coins and other valuables from the victim's residence. (Exhibit 63, at p. 199). Petitioner used
 13 secrecy, fear, and isolation to financially exploit the victim. (Exhibit 64, at pp. 35-41). The record
 14 shows that sufficient evidence was presented at trial for a rational trier of fact to find petitioner guilty
 15 beyond a reasonable doubt of the category B felony of exploitation of an older person.

16 Moreover, in rejecting petitioner's claims of insufficiency of the evidence, the Nevada
 17 Supreme Court ruled:

18 Suratos claims that insufficient evidence was adduced at trial to
 19 support the convictions. When reviewing the sufficiency of the
 20 evidence, we determine "whether, after viewing the evidence in the
 21 light most favorable to the prosecution, *any* rational trier of fact could
 22 have found the essential elements of the crime beyond a reasonable
 23 doubt." *Rose v. State*, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007)
 24 (internal quotation marks omitted). The jury was presented with
 25 evidence that Suratos (1) intentionally administered the 88-year-old
 26 victim excessive doses of narcotics, an unprescribed blood thinner, and
 alcoholic spirits, (2) knowingly failed to secure the depressed victim's
 medications, enabling him to access them and attempt suicide, (3)
 waited over 12 hours before obtaining medical care for the victim after
 he suffered a fall that fractured his pelvis, caused severe bruising, and
 was accompanied by gastrointestinal bleeding, (4) gained the trust and
 confidence of the victim, (5) exploited his fears of going to a nursing
 home, (6) took control over all of the victim's assets within a short

1 period of time after taking over his care, and (7) withdrew over
 2 \$7,000.00 from the victim's account for her own purposes. The jury
 3 was also presented evidence that the victim suffered substantial bodily
 4 harm as a result of Suratos' actions. We conclude that a rational juror
 5 could have found, beyond a reasonable doubt, that Suratos committed
 6 neglect of an older person causing substantial bodily harm, see NRS
 7 200.5092(4); NRS 200.5099(2), (7), and exploitation of an older
 8 person, see NRS 200.5092(2); 200.5099(3)(c). It is for the jury to
 9 determine the weight and credibility to give conflicting testimony,
Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981), and we
 10 decline Suratos' invitation to depart from our precedent on this issue
 11 by conducting an independent evaluation of the evidence to resolve
 12 conflicting evidence differently from the jury. The jury's verdict will
 13 not be disturbed on appeal where, as here, substantial evidence
 14 supports the verdicts. See id.; see also McNair v. State, 108 Nev. 53,
 56, 825 P.2d 571, 573 (1992).

15 (Exhibit 109, at pp. 2-3). The factual findings of the state court are presumed correct. 28 U.S.C.
 16 § 2254(e)(1). Petitioner has failed to meet the burden of proving that the Nevada Supreme Court's
 17 ruling was contrary to, or involved an unreasonable application of, clearly established federal law, as
 18 determined by the United States Supreme Court, or that the ruling was based on an unreasonable
 19 determination of the facts in light of the evidence presented in the state court proceeding. This Court
 20 denies habeas relief on Grounds Three and Four of the federal petition.

15 **D. Ground Five**

16 Petitioner asserts that the state district court erred in refusing five jury instructions proposed
 17 by the defense, in violation of due process.

18 To obtain federal habeas relief based on an improper jury instruction, petitioner must
 19 establish that the instruction so infected the entire trial that the resulting conviction violates due
 20 process. *Masoner v. Thurman*, 996 P.3d 1003, 1006 (9th Cir. 1993); *Estelle v. McGuire*, 502 U.S. 62,
 21 72 (1991); *Henderson v. Kibbe*, 431 U.S. 145, 154 (1977). Demonstrating that an erroneous
 22 instruction was so prejudicial that it will support a collateral attack on the Constitutional validity of a
 23 state court's judgment requires the court to determine "whether the ailing instruction by itself so
 24 infected the entire trial that the resulting conviction violates due process," not whether the instruction
 25 is "undesirable, erroneous, or even universally condemned." *Henderson v. Kibbe*, 431 U.S. at 154
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1 (citations omitted); *Estelle v. McGuire*, 502 U.S. 62, 72 (1991). In reviewing jury instructions, the
 2 court inquires as to whether the instructions as a whole are misleading or inadequate to guide the
 3 jury's deliberation. *U.S. v. Garcia-Rivera*, 353 F.3d 788, 791 (9th Cir. 2003) (citing *United States v.*
 4 *Frega*, 179 F.3d 793, 806 n.16 (9th Cir. 1999) (internal citations omitted)). The question is whether
 5 an instruction so infected the entire trial that the resulting conviction violated due process. *Estelle*,
 6 502 U.S. at 72. An instruction may not be judged in isolation, "but must be considered in the context
 7 of the instructions as a whole and the trial record." *Id.* Furthermore, jurors are presumed to follow
 8 the instructions that they are given. *U.S. v. Olano*, 507 U.S. 725, 740 (1993).

9 In the instant case, petitioner has failed to provide this Court with the proposed instructions,
 10 or show that the proposed instructions were warranted by law. Petitioner has not explained how the
 11 proposed instructions were related to the defense theory presented at trial. Petitioner has not
 12 explained how or established that she was prejudiced by the omission of the proffered jury
 13 instructions. Petitioner has not shown that the omission of the proposed jury instructions had a
 14 substantial and injurious effect in determining the jury's verdict, and has not shown that the omission
 15 of the instructions so infected the entire trial that the resulting conviction violates due process. In
 16 addressing this claim, the Nevada Supreme Court ruled as follows:

17 We conclude that the district court did not err in refusing to give
 18 Suratos proposed jury instructions on administrative violations,
 19 superceding cause, and collateral estoppel because they misstated the
 20 applicable law or were not supported by the evidence. See Vallery v.
 21 State, 118 Nev. 357, 373-74, 46 P.3d 66, 77-78(2002) (holding that
 22 defendant in elder abuse case was not entitled to instruction
 23 erroneously stating that violation of regulations is not a criminal act, or
 24 to instruction superceding cause when evidence showed conduct at
 25 issue was, at most, a concurrent, contributing cause); Carter v. State,
 26 121 Nev. 759, 765, 121 P.3d 592, 596 (2005) (district court need not
 accept misleading, inaccurate or duplicitous jury instructions); see also
Adler v. State, 95 Nev. 339, 346, 594 P.2d 725, 730 (1979) (holding
 that defendant was not entitled to theory instruction that was not a
 defense to the crime).

27 The district court refused both the State's and Suratos' proffered
 28 instructions defining undue influence because there is no Nevada
 29 authority defining the term as it relates to the elder abuse statutes and
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1 the term is used in ordinary language. See NRS 175.161(2), (3)
 2 (providing that district court instructs the jury as it “thinks necessary”
 3 and must refuse instructions that are not pertinent). We note that the
 4 term undue influence was partially defined in an instruction to the jury
 5 and the definition proffered by Suratos would not have provided a
 6 complete theory of defense because undue influence was only one
 7 theory under which the jury could have found exploitation. See NRS
 8 200.5092(2)(a); see also *Adler*, 95 Nev. at 346, 594 P.3d at 730
 9 (upholding district courts refusal of instruction because, in part, the
 10 theory was not a complete defense). Therefore, we conclude that the
 11 district court did not abuse its broad discretion or commit judicial error
 12 in refusing this instruction.

13 Finally, we conclude that the district court erred by refusing Suratos’
 14 proposed instruction defining “reasonable cause to believe.” See NRS
 15 200.50925(1). However, we conclude that the error did not contribute
 16 to the jury’s verdict and therefore the error was harmless and no relief
 17 is warranted. See *Crawford v. State*, 121 Nev. 744, 756, 121 P.3d 582,
 18 590 (2005).

19 (Exhibit 109, at pp. 3-5). The factual findings of the state court are presumed correct. 28 U.S.C.
 20 § 2254(e)(1). Petitioner has failed to meet the burden of proving that the Nevada Supreme Court’s
 21 ruling was contrary to, or involved an unreasonable application of, clearly established federal law, as
 22 determined by the United States Supreme Court, or that the ruling was based on an unreasonable
 23 determination of the facts in light of the evidence presented in the state court proceeding. Habeas
 24 relief is denied as to Ground Five of the federal petition.

25 **IV. Certificate of Appealability**

26 In order to proceed with his appeal, petitioner must receive a certificate of appealability. 28
 1 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951
 2 (9th Cir. 2006); see also *United States v. Mikels*, 236 F.3d 550, 551-52 (9th Cir. 2001). District
 3 courts are required to rule on the certificate of appealability in the order disposing of a proceeding
 4 adversely to the petitioner or movant, rather than waiting for a notice of appeal and request for
 5 certificate of appealability to be filed. Rule 11(a) of the Rules Governing Section 2254 and 2255
 6 Cases. Generally, a petitioner must make “a substantial showing of the denial of a constitutional
 7 right” to warrant a certificate of appealability. 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S.
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1 473, 483-84 (2000). “The petitioner must demonstrate that reasonable jurists would find the district
2 court's assessment of the constitutional claims debatable or wrong.” *Id.* (quoting *Slack*, 529 U.S. at
3 484). In order to meet this threshold inquiry, the petitioner has the burden of demonstrating that the
4 issues are debatable among jurists of reason; that a court could resolve the issues differently; or that
5 the questions are adequate to deserve encouragement to proceed further. *Id.* In this case, no
6 reasonable jurist would find this Court's denial of the petition debatable or wrong. The Court
7 therefore denies petitioner a certificate of appealability.

8 **V. Conclusion**

9 **IT IS THEREFORE ORDERED** that the petition for a writ of habeas corpus is **DENIED**
10 **IN ITS ENTIRETY.**

11 **IT IS FURTHER ORDERED** that petitioner is **DENIED A CERTIFICATE OF**
12 **APPEALABILITY.**

13 **IT IS FURTHER ORDERED** that the Clerk **SHALL ENTER JUDGMENT**
14 **ACCORDINGLY.**

15 Dated this 12th day of July, 2013.

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19 UNITED STATES DISTRICT JUDGE
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